

LINDA SOTO, et al.
Petitioners,

v.

EDINBURG CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT
Respondent.

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BEFORE THE

COMMISSIONER OF EDUCATION

THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

STATEMENT OF THE CASE

Petitioners, Linda Soto, Lisa Swanson, Maria Bueno-Espino and Leonard Gandy, complain of actions and decisions of Respondent, Edinburg Consolidated Independent School District (“ECISD”). Merle Dover is the Administrative Law Judge appointed by the Commissioner of Education to hear this cause. Petitioners are represented by Dohn S. Larson, Attorney at Law, Austin, Texas. Respondent is represented by Michael R. Salinas, Attorney at Law, Pharr, Texas and Kristi Godden, Attorney at Law, Austin, Texas.

The primary issue in this case concerns whether the lesson plan template required to be used by teachers by the Harwell Middle School Principal violates the Texas Paperwork Reduction Act, Texas Education Code sections 11.164(a) and (a)(6). Because the requirement to use the template is neither a redundant request for information nor does it require information beyond what is permitted by Texas Education Code section 11.164(a)(6), the Administrative Law Judge issued a Proposal for Decision recommending that Petitioners’ appeal should be denied. Exceptions, responses, and revised exceptions were filed and considered, and appropriate clarifications were made.

FINDINGS OF FACT

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are supported by substantial evidence according to the standards set forth in Texas Administrative Code section 157.1073(h):

1. ECISD provides teachers with a tool known as the I-Curriculum platform, which includes district prepared lesson plans for use by the district's teachers, if they choose.
2. Each I-Curriculum lesson plan includes materials, TEKS/ELPS, Lesson Objective(s), Differentiation Strategies, Vocabulary, Engagement, Exploration, Explanation, Elaboration, Resources, Evaluation, and Enrichment/Extension.
3. Teachers at Harwell Middle School are required to submit the Lion Lesson Plan, a weekly lesson plan template documenting the teacher's plan for instruction for the week.
4. The Lion Lesson Plan includes fields for TEKS, Content Objective, Differentiation, Technology, and Activity/Assessment.
5. The teacher may copy from the I-Curriculum lesson plan and insert and/or edit the content into the Lion Lesson Plan template.
6. The Lion Lesson Plan is the only lesson plan required to be completed and submitted by the Harwell Middle School teachers.

DISCUSSION

Texas Paperwork Reduction Act

In 1997, the Legislature enacted the Texas Paperwork Reduction Act, Texas Education Code section 11.164, "to ensure that a school district does not request numerous and lengthy written reports from teachers and to limit a school district's requirements of teachers to only produce in writing what is listed in the statute."¹ The statute reads in relevant part:

- (a) The board of trustees of each school district shall limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare. A classroom teacher may not be required to prepare any written information other than:
 - (6) a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level²

¹ *Ysleta Indep. Sch. Dist. v. Porter*, No. 13-13-00409-CV, 2015 LEXIS 3594, at *8-9 (Tex. App.—Corpus Christi April 13, 2015, no pet.).

² Tex. Educ. Code § 11.164.

Petitioners contend that their Principal's requirement that they complete the lesson plan template she created, the Lion Lesson Plan, violates the Paperwork Reduction Act ("Act") because the I-Curriculum lesson plan prepared by district specialists and available for their use should be sufficient. Petitioners complain that they are required to copy and paste from the district created I-Curriculum and they are required to complete daily rather than weekly entries, thereby constituting redundant paperwork. Petitioners also contend that the Lion Lesson Plan requires more detailed information than what the Act allows, including: assessments, activities, technology, materials, and differentiation of instruction. According to Petitioners, the Act "permits a district to direct a teacher to prepare a lesson plan that comprises simply, and only, the information/knowledge a teacher communicates to a student."³

To resolve this issue requires analysis and application of the statute and caselaw interpreting and applying the statute.

Ysleta Independent School District v. Porter

The question to be addressed here is very similar to that addressed by the court in *Ysleta Independent School District v. Porter*. In *Ysleta*, the teachers filed a grievance claiming that the district's requirement that weekly lesson plans include: (1) the Texas Essential Knowledge and Skills ("TEKS") objectives to be covered; (2) the Texas Assessment of Knowledge and Skills ("TAKS") objectives; (3) the lesson objectives; (4) the lesson activities and strategies; (5) the assessment and cognitive levels; (6) differentiated activities and/or modifications for special populations; and (7) homework, violated Texas Education Code section 11.164.⁴ In response to the teachers' grievance, the district modified the lesson plan requirements so that teachers only needed to provide TEKS objectives' numbers, but the board upheld the remainder of the requirements. The teachers appealed to the Commissioner, who found that the district's lesson plan requirements, as modified, did not violate the statute. The teachers appealed to district court and the court reversed the Commissioner's decision as to allowing the inclusion in the lesson plan

³ Petitioner's Brief at 4.

⁴ *Ysleta*, at *2-3.

of assessments, differentiated activities and/or modifications for special populations, and the cognitive levels.⁵ Both sides appealed.

The appellate court determined that proper statutory analysis for construing the Legislature's intent regarding the components of a lesson plan requires application of the plain meaning of the words, as the statute is clear and unambiguous.⁶ The court used Webster's online dictionary definition of "lesson" as "an activity that you do in order to learn something; also: something that is taught."⁷ The court concluded that based on the common definition and a plain reading of the statute, the Legislature intended to prohibit school districts from requiring lesson plans to include anything other than a brief, general outline of the information the teacher plans to teach during a particular class period and the activities to be used to teach the lesson.⁸ Thus, a description of the activity or what the students are to do in the lesson is permitted by the statute.

The *Ysleta* court determined that it is permissible for a school district to provide a template for the teachers to use,⁹ to require the teachers to include the TEKS¹⁰ and TAKS objectives,¹¹ resources, and activities.¹² On the other hand, the court determined that it was not allowed by the statute to include a description of cognitive levels in lesson plans because cognitive levels are not taught to students.¹³ The court determined that substantial evidence did not support that assessments are taught to students, and therefore, assessments could not be required in lesson plans. Finally, the court concluded that including differentiated activities and/or modifications in a lesson plan was not a violation because the district made including this item optional.¹⁴

⁵ *Id.* at *6.

⁶ *Id.* at *7-8 citing *R.R. Comm'n v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011).

⁷ *Id.* at *13 citing <http://www.meriam-webster.com/dictionary/lesson>.

⁸ *Id.* citing *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W. 3d 432, 441 (Tex. 2011) ("words' meanings cannot be determined in isolation but must be drawn from the context in which they are used").

⁹ *Id.* at *21.

¹⁰ *Id.* at *26-27.

¹¹ *Id.* at *31-32.

¹² *Id.* at *32-33.

¹³ *Id.* at *36-39.

¹⁴ *Id.* at *40.

Lion Lesson Plan

The Lion Lesson Plan is a template provided to Petitioners by their Principal to be completed weekly. Weekly templates were found to comply with the Act in the *Ysleta* case.¹⁵ The Lion Lesson Plan template contains five (5) fields for each day of the week: TEKS standard, content objective, differentiation for special populations, technology, and activity and/or assessment. The template is consistent with the Legislature's directive that a unit or weekly lesson plan outlines, in a brief and general manner, the information to be presented during each period at the secondary level. Every field on the sample provided in the record was completed with less than twenty words.

Petitioners contend that requiring them to complete the Lion Lesson Plan template violates Texas Education Code 11.164 in every respect except for the requirement to include the content objective. In fact, Petitioners contend that the information a teacher communicates to a student is "simply and only" the information that needs to be included in a lesson plan to be in compliance with the Act. Petitioners contend that their Principal's requirement to include the TEKS, differentiation for special populations, technology, and activity/assessment in their lesson plans violates the Act. Petitioners are mistaken. The inclusion in a lesson plan of the TEKS,¹⁶ technology,¹⁷ and activities¹⁸ was resolved by the *Ysleta* court and found to be in compliance with the Texas Education Code section 11.164. Thus, the determination as to whether the fields for assessment and differentiation for special populations are allowed by the Act are the only questions to be resolved here.

Assessment

Petitioners argue that requiring assessments to be included in a lesson plan violates the Act because assessments are not information presented to students; but rather are a way to measure

¹⁵ *Id.* at *21.

¹⁶ *Id.* at *26-27.

¹⁷ *Id.* at *32-33. Examples of technology used in the Lion Lesson Plan are hardware, software, videos, apps, etc. As such, technology used in the lesson is a subset of resources and complies with the requirements of the Act as construed in *Ysleta*.

¹⁸ *Id.* at *32-33.

student progress. Although the *Ysleta* court determined that assessments were not properly part of the Ysleta Independent School District's lesson plan requirement, this conclusion was not reached through statutory analysis, but rather, through a substantial evidence review of the evidence presented. The court concluded that there was not substantial evidence to support the determination that assessments were information presented to the students.¹⁹ Accordingly, that determination is not controlling here.

Three years after the *Ysleta* decision, the Commissioner again construed the statutory limitations on lesson plans in *Baxter v. Sherman Independent School District*.²⁰ The Commissioner recognized that lesson plans serve multiple purposes. Most importantly the lesson plan is a tool used by the teacher to organize and plan instruction. But the lesson plan is also a tool for administrators to gauge how well students are being taught and for use by substitute teachers. The Commissioner determined that because the ultimate goal of a good plan of instruction is successful student learning, a crucial part of the lesson plan is the outcome. Measurement of student learning, assessment, reflects that outcome.

Consistent with the Commissioner's reasoning in *Baxter*, Marisa Garza, Principal of Harwell Middle School, testified at Petitioners' Level III grievance hearing that the Lion Lesson Plan supports the teacher in meeting the expectations of the state and district so that students will achieve the intended outcome, academic success.²¹ Ms. Garza explained in her Level I grievance response that the Lion Lesson Plan helps her to ensure that classroom activities are related to expected outcomes.²²

In the sample Lion Lesson Plan provided, the field for assessment is entitled, "Activity/Assessment."²³ The guidance for teachers to complete this field states: "What activity and/or assessment will you use for your lesson?" As Respondent aptly explained, assessments are activities students complete to demonstrate mastery of the lesson. Not every lesson requires an

¹⁹ *Id.* at *35-36.

²⁰ Docket No. 092-R10-0612 (Comm'r Educ. 2015).

²¹ LR 000020.

²² LR 000112.

²³ LR 000063.

assessment, but assessment should be included in the lesson plan when assessment occurs as part of the lesson's activity.

Indicating the type of assessment to be presented in the lesson—a quiz, test, project, presentation, etc.—takes no more than a few words. This complies with the statutory requirement that lesson plans are to be an outline of the information to be presented in a brief and general manner. Following the Commissioner's analysis in *Baxter*, including assessment in the Lion Lesson Plan does not violate Texas Education Code section 11.164(a). Additionally, it should be noted that the assessment piece is included in the I-Curriculum provided to the teachers by Respondent. Accordingly, little time or effort is required for the teacher to merely cut and paste or edit this field, if the teacher chooses that option.

Differentiation for Special Populations

The *Ysleta* court did not determine whether it was permissible to require differentiation for special populations in a lesson plan because the district stated that the inclusion of differentiation was optional, and therefore, the issue was moot. There is no indication in the record that Respondent has made the inclusion of differentiation for special populations optional, so it must be analyzed here.

Petitioners argue that requiring differentiation for special populations to be included in a lesson plan violates the Act because differentiation is not information presented to students. The differentiation field allows the teacher to indicate how the information communicated will be adapted to fit the needs of differing student populations such as gifted and talented students, students with learning disabilities, and students with limited English proficiency. How a lesson will be tailored to the needs of the students in the classroom is an integral part of what the Petitioners acknowledge is the essence of a lesson plan: information presented to students. The Lion Lesson Plan requires only a brief, general description of how this is to be accomplished, such as using supplemental aids or pairing students of varying capabilities to work together.²⁴ Petitioners fail to show how this requirement violates the Act.

²⁴ LR 00063, 00065, 00066.

Lion Lesson Plan is Not Redundant

Petitioners argue that requiring teachers to prepare the Lion Lesson Plan is a redundant request for information because it is “characterized by similarity or repetition” to paperwork that already exists, the district created I-Curriculum. Petitioners complain that they must “copy and paste” information from the I-Curriculum to the Lion Lesson Plan.²⁵ But Petitioners misinterpret what the Act prohibits. The Act does not prohibit teacher preparation of information that already exists; but rather, the Act prohibits “redundant requests for information.” This issue was directly addressed by the Commissioner in *Port Arthur Teachers Association/Texas State Teachers Association v. Port Arthur Independent School District*.²⁶ The Commissioner determined that “[t]o show a redundant request for information, one would have to show at least two requests to a teacher for the same information.”²⁷ Respondent requires each teacher to produce only one weekly lesson plan. A teacher may or may not choose to utilize the district provided I-curriculum when creating her own lesson plan. Only one weekly lesson plan is requested. There is no redundancy here.

Daily Plan

Petitioners object that the Lion Lesson Plan template includes space for entries for each day of the week. Nothing in the record indicates that an arrow cannot be used to indicate that content started on one day continues to the next. Further, the statute itself allows for not only daily activities to be included in the lesson plan but for the lesson plan to include “the information to be presented during each period at the secondary level.”²⁸ Petitioners teach at a middle school, which is considered secondary level.²⁹ Thus, requiring the Petitioners to complete lesson plans for each period of each day would be allowed under the Act.

²⁵ Initially, Petitioners also complained that they were required to make a copy of their weekly lesson plan and post it on their door. Respondent has withdrawn this requirement, so the argument is moot. However, requiring a copy to be made is not a redundant request for information. *Port Arthur Teachers Ass'n/Texas State Teachers Ass'n v. Port Arthur Indep. Sch. Dist.*, Docket No. 034-R10-0308 (Comm'r Educ. 2012).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Tex. Educ. Code § 11.164(a)(6).

²⁹ The six middle schools at Edinburg CISD are included in the list of secondary campuses on the district website.

Summary

Based on the plain meaning of the words, a lesson is something that is taught or an activity that one does to learn something.³⁰ A description of the activity in a brief and general manner includes what the students are to do. In describing what the students are to do, it is logical that the materials they are to use—books, technology, calculators or other learning tools—would be included in the plan. Thus, the lesson plan contains an objective (information to be taught), how it is to be taught (activities students will perform), and a determination as to whether the students met the objective (learned the material), as determined through some form of assessment. Including assessment as part of the “plan” completes the process and is essential when construing the statute as a whole. There is nothing absurd about expecting the teacher to include as part of the “plan” for the lesson that the students will actually learn and there must be some way to determine whether that has been accomplished. And because a teacher must tailor instruction to reach every student in her classroom, a lesson plan must include the way she will do this. In other words, the way a lesson is taught must include differentiation for the different segments of the student population. Although differentiation occupies a separate field in the Lion Lesson Plan, it is a subset of the way the lesson is to be presented, since the way a lesson is taught may need to be varied to meet the needs of the specific students in the teacher’s class. As the *Ysleta* court noted, “a lesson plan would also include the steps a teacher intends to take to teach the subject matter.”³¹ Thus, the Lion Lesson Plan complies with the Act.

Exceptions

Petitioners’ Exceptions and Requested Findings of Fact suffer from a fundamental misinterpretation of what is prohibited by the Act. The Act prohibits redundant requests for the same information. The fact that information requested from the teacher also exists on a district created platform for the teachers’ use as a resource does not render the request a redundancy.

³⁰ *Ysleta*, at *13

³¹ *Id.* at *16 n.12.

Petitioners' argument is reminiscent of the saying: "No good deed goes unpunished." The district created the I-curriculum as a resource for teachers and to assist in each teacher's presentation of the curriculum tailored to the needs of their individual students. For the teachers to suggest that the district created lesson plans should be sufficient flies in the face of the educationally sound principle that lessons must be modified to meet the students' needs. It is doubtful that the teachers would prefer a requirement that each teacher *must* follow the I-curriculum lesson plan without alteration, which is the logical extension of their argument that the I-curriculum lesson plan should be sufficient. Petitioners' Exceptions and Request for Additional Findings of Fact are denied.

CONCLUSIONS OF LAW

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as the Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education has jurisdiction over this case under Texas Education Code section 7.057.
2. Texas Education Code section 11.164(a) limits redundant requests for written information from classroom teachers.
3. Texas Education Code section 11.164(a)(6) authorizes a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level.
4. The Lion Lesson Plan required by Respondent does not require teachers to produce redundant information in violation of Texas Education Code section 11.164(a).
5. The Lion Lesson Plan required by Respondent does not violate the requirement of Texas Education Code section 11.164(a)(6) that a lesson plan cannot be more than a brief and general outline.
6. Respondent's lesson plan requiring completion of five fields: a simple description of the TEKS standard, the content objective, differentiation for special populations, technology, and activity/assessment, does not violate Texas Education Code section 11.164(a).

7. Allowing a teacher to “cut and paste” information from a district-prepared online lesson plan cache to prepare the teacher’s personal lesson plan is not a redundant request for information.

8. The requirement to include how the information is to be presented to special populations does not violate the requirement in Texas Education Code section 11.164(a)(6) that a lesson plan is a brief and general outline of the information to be presented.

9. Assessments are activities students complete as part of the lesson to demonstrate mastery of the lesson, an integral part of a lesson.

10. The requirement to include how learning will be assessed in the lesson plan does not violate the requirement in Texas Education Code section 11.164(a)(6) that a lesson plan is a brief and general outline of the information to be presented.

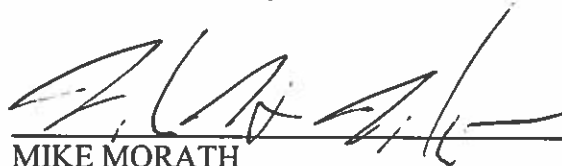
11. Including, in a brief and general manner, the information to be presented each day of the week is consistent with the unit or weekly lesson plan allowed by Texas Education Code section 11.164(a)(6).

12. Petitioners’ appeal should be denied.

ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby ORDERED that the Petitioners’ appeal be, and is hereby, DENIED.

SIGNED AND ISSUED this 1 day of April, 2019.



MIKE MORATH
COMMISSIONER OF EDUCATION